

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

Proceeding by the Department of)	
Telecommunications and Energy on)	
its own Motion to Implement the Federal)	D.T.E. 03-60
Communications Commission's <u>Triennial</u>)	
<u>Review Order</u> Regarding Switching for)	
Mass Market Customers)	

**REPLY TESTIMONY OF JOSEPH GILLAN
ON BEHALF OF
BROADVIEW NETWORKS, INC., BULLSEYE TELECOM,
INFOHIGHWAY COMMUNICATIONS CORPORATION,
MCGRAW COMMUNICATIONS, INC. AND
METROPOLITAN TELECOMMUNICATIONS INC.
(CLEC COALITION)**

AND DSCI CORPORATION

1 **Q. Please state your name and party sponsoring your reply testimony.**

2

3 A. My name is Joseph Gillan. My reply testimony is sponsored by the same
4 coalition of CLECs that sponsored my direct testimony: ARC Networks, Inc.
5 d/b/a InfoHighway Communications Corp., Broadview Networks, Inc., Bullseye
6 Telecom, Inc., McGraw Communications, Inc. and Metropolitan
7 Telecommunications, Inc., d/b/a MetTel (CLEC Coalition).

8

9 **Q. What is the purpose of your reply testimony?**

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1 A. The purpose of my reply testimony is to briefly and narrowly respond to two areas
2 addressed in the testimony of MCI:

3
4 * MCI's *recommendation* that the appropriate area to evaluate impairment
5 for mass market local switching is the wire center, and

6
7 * MCI's *suggestion* that it may be appropriate to divide the analog mass
8 market between business and residential customers.

9
10 As I understand MCI's testimony, each of the above is designed to address the
11 same potential concern – that is, that the Department may mistake some *limited*
12 form of entry (either limited in terms of geography or customer class) as evidence
13 of non-impairment, by counting as a trigger a company that does not provide
14 service to the broad mass market, but may offer service in some limited area or to
15 a select group of customers. Although I share MCI's concern in this regard, I do
16 not agree with its proposed solutions. Rather, I recommend that the Department
17 address the concern directly, by correctly defining the mass market as a broad
18 market comprised (in Massachusetts) of millions of individually small analog
19 phone customers, and by correctly applying the trigger analysis to only count as
20 qualifying switch triggers those carriers that actually compete across that broad
21 market.

22

1 **Q. Why do you disagree with MCI's suggestion that the market be defined by**
2 **each individual wire center?**

3
4 A. I disagree with the approach because it ignores the defining feature of the mass
5 market – i.e., that it requires *mass* for competition to succeed. No individual mass
6 market customer is particularly large or exceptionally profitable to serve; as a
7 result, competitors must be able to address a large base of potential customers in
8 order to build a base of any size. Wire centers do not stand as independent
9 markets, individually capable of supplying the mass needed for mass market
10 competition to develop.

11
12 Moreover, mass market competition is interdependent – that is, it is not possible
13 to eliminate switching in one part of a market without the consequences of that
14 decision being felt throughout the entire area. If UNE-P is not available in the
15 states' largest wire centers, the effect of that limitation will be felt not only in the
16 area served by those wire centers, but in the other surrounding areas as well.

17 Dissecting the market into hundreds of small wire centers runs counter to the type
18 of wide availability needed to produce mass market competition – the ability to
19 comprehensively offer service to millions of small users that live and work across
20 a broad footprint. Mass market competition cannot coexist in a checkerboard of

1 UNE-availability, which is what is implied by the suggestion that individual wire
2 centers form independent markets.¹

3
4 **Q. Why has MCI suggested the wire center approach?**

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6 A. One reason is that MCI is concerned that, if the Department adopts a broader area,
7 it may mistakenly conclude that there are sufficient triggering CLECs to eliminate
8 unbundled switching. As MCI explained:

9 In contrast [to the wire center] a market definition based on a
10 larger geographic area, such as the Metropolitan Statistical Area
11 ("MSA"), creates a significant risk that trigger or potential
12 deployment analyses based on such a market definition will result
13 in a finding of no impairment even where multiple, competitive
14 supply does not exist today and is unlikely to occur in the
15 foreseeable future.²

16
17
18 **Q, Has MCI correctly identified the source of its concern?**

19
20 A. No, I do not think so. The risk that MCI cites – i.e., that a trigger will be satisfied
21 even though impairment remains – does *not* result from the size of the geographic
22 market, rather it is the result of a trigger (or potential deployment) analysis that
23 does not recognize the importance of assuring that any alleged self-provider
24 actually be serving the geographic area served by UNE-P before it qualifies as a

¹ Moreover, many small business customers have multiple locations, which cannot be served where UNEs are not uniformly available.

² Testimony of Michael D. Pelcovits on Behalf of MCI (Feb. 6, 2004) (hereinafter "Pelcovits") at 5.

1 trigger. So long as the Department correctly applies the trigger (or potential
2 deployment) analysis by requiring that trigger candidates offer service across the
3 market before qualifying as triggering CLECs, then the Department can correctly
4 define the market without fear of mistakenly removing unbundled switching
5 where it is needed.³ Rather than dividing the state into small areas in the hope
6 that the Department will be less likely to make errors, it is more important to
7 directly confront the concern. After all, adopting a market definition that suggests
8 that the mass market is divisible into very small areas is just as potentially
9 harmful as defining the areas too large.

10
11 **Q. What are the potential harmful consequences that follow from using the wire**
12 **center as the geographic market?**

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14 A. Dissecting the mass market into hundreds of small wire centers implies that
15 entrants can rationally compete with a checkerboard availability of the UNEs used
16 to provide service. The Department cannot eliminate UNE-P in some wire
17 centers without affecting competitive activity in others because the mass market is
18 *not* wire-center specific. In fact, UNE-L has failed to produce mass market
19 competition, at least in part, because it necessarily represents a “one-wire-center-
20 at-a-time” entry strategy and that characteristic is an impairment corrected by

³ I note that the need to make sure that the competitive footprint of potential triggering CLEC coincides with the defined market applies no matter what size market the Department adopts. The principal difference introduced by using a larger (rather than smaller) area is not that the likelihood of an error increases, it is that the consequences of that error grow larger.

1 access to unbundled local switching. The mass market shouldn't be defined by
2 UNE-L's weakness; it should be defined to appreciate the strengths of UNE-P –
3 the one entry strategy that has succeeded in bringing competition to small
4 business and residential consumers throughout Massachusetts.

5
6 The correct approach is to define the mass market broadly because the mass
7 market is by nature a broad market, and then to make sure that only carriers that
8 offer service with a comparable geographic reach qualify as triggers. Punching
9 holes in the mass market creates a checkerboard effect that inevitably dilutes the
10 market, harming competition and customer choice. This effect will be felt not
11 only in the areas that the Department will have redlined and walled-off from
12 competition, but to the market overall. The reality that wire centers are linked in
13 this manner cannot be avoided by assuming, for purposes of UNE-availability,
14 that each wire center is an independent island of competitive interest.

15
16 **Q. Do you support MCI's suggestion that the Department should consider**
17 **dividing the analog market between residential and business customers?**
18

19 A. No. Although I share the concern expressed by MCI, I believe that its suggested
20 solution is in error.⁴ As I explained in my direct testimony, the mass market is

⁴ As MCI states: "The Department, therefore, must be prepared either to treat residential and small business customers as falling into two separate submarkets of the mass market or, in the alternative, to require that a competitor must serve both residential and small business customers to be considered as a potential triggering company." Pelcovits at 54.

1 correctly defined by the TRO as a single market, defined by the underlying
2 technology (analog voice service or POTS), and not by customer labels. One of
3 the key goals of competition is to ferret out and eliminate unjustified legacy
4 pricing practices that are the product of the industry's monopoly past. It would be
5 inappropriate to (as MCI suggests) use UNE-availability to preserve price
6 discrimination in monopoly tariffs, when the goal of UNE-competition should be
7 to drive such distinctions from the market.

8
9 The TRO correctly defines the mass market in a more neutral and impairment-
10 related manner, by focusing on the common denominator of mass market
11 services, the analog loop at the customer premise. By defining the mass market in
12 this way, the TRO sets the stage for a competitive check on the rate structures
13 inherited from the very environment the Act seeks to replace, the era of the local
14 monopoly. Moreover, it is useful to remember that the incumbent is able to use
15 UNE-P to serve the entire mass market (both residential and business customers)
16 and CLECs must have the same ability if they are to compete.

17
18 **Q. Do you agree with MCI that an alleged self-provider must be serving**
19 **residential customers in order to be counted as a mass market trigger?**

20
21 A. Yes. The Department should fully expect to see *some* overlap from other entry
22 strategies into the mass market, for in the real world market boundaries are not
23 perfect. The mass market served is geographically broad, but there are likely to

1 be pockets served by alternatives; the mass market contains millions of customers,
2 yet there will be some subgroups that attract more attention than others.⁵ The
3 mass market itself cannot be defined by its exceptions, be they isolated
4 geographic areas or select customer groups. Only alternatives that compete at the
5 core of the mass market – offering service broadly to customers, including
6 residential customers – should be counted upon as evidence to support a finding
7 of non-impairment.

8
9 This is not a case where two wrongs can make a right. Subdividing the state into
10 individual wire centers is not the solution to avoid a trigger analysis that fails to
11 appreciate the importance of a competitor’s footprint nor is splitting the analog
12 mass market into business and residential classes the correct response to the fringe
13 entry by some CLECs at the edge of the mass market. The only way that a trigger
14 analysis can be relied upon to demonstrate that “no impairment exists”⁶ in the
15 mass market is for the Department to assure that the only CLECs that count as
16 mass market switch triggers are those carriers actively serving analog mass
17 market customers (including the core of the mass market, residential customers)

⁵ For instance, as MCI notes, the fact that business customers generally pay higher rates under the ILEC’s tariff may make them transitionally more attractive than residential customers that purchase no vertical services. On the other hand, the average revenue for MCI’s Neighborhood service is comparable to the rates paid by small businesses. This does not mean that Neighborhood customers should be viewed as a distinct market anymore than the Department should view analog small business customers differently – each is a member of the mass market, and the Department should conduct its trigger analysis in a manner that assures there is competition across the entire market through alternatives to UNE-P before it concludes that unbundled switching is no longer needed.

⁶ TRO ¶ 494 “If the triggers are satisfied, the states need not undertake any further inquiry, because no impairment should exist in that market.”

1 across the broad geographic footprint that defines the mass market in
2 Massachusetts.

3

4 **Q. Does this conclude your reply testimony?**

5

6 **A. Yes.**